

Ward v City of New York

2023 NY Slip Op 32160(U)

June 30, 2023

Supreme Court, New York County

Docket Number: Index No. 400564/2013

Judge: Erika M. Edwards

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA M. EDWARDS
Justice

PART 10M

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JANE WARD,

Plaintiff,

- v -

INDEX NO. 400564/2013
MOTION DATE 02/20/2023,
2/22/2023
MOTION SEQ. NO. 008, 009

THE CITY OF NEW YORK, THE NEW YORK CITY
HEALTH AND HOSPITAL CORPORATION, BELLEVUE
HOSPITAL CENTER, CARLINE DREWES-PESSEL, M.D.,
MING TSAI, M.D., JUDITA B. BAUTISTA, M.D., MARIE
WERNER, M.D., ALLISON WEBB, M.D., DEBORAH B.
DYSON, RPA, and John Doe and Jane Doe 1 through 6
other unknown and unnamed defendants,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 24, 25, 26, 27, 28, 29, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 55

(Motion 009) 30, 31, 32, 33, 34, 35, 36, 37, 38, 49, 56, 57, 58, 59

were read on this motion to/for STRIKE ANSWER/PRECLUDE.

Upon the foregoing documents, the court denies Plaintiff Jane Ward’s (“Plaintiff”) motion to strike Defendants The City of New York’s (“City”), The New York City Health and Hospital Corporation’s and Bellevue Hospital Center’s (collectively “NYCHHC”) Answer, filed under motion sequence 008, and Plaintiff’s motion to strike Defendants NYCHHC’s Answer and/or to preclude NYCHHC from testifying or presenting evidence at trial, filed under motion sequence 009.

This matter involves Plaintiff’s allegations of medical malpractice for Defendants’ alleged negligence in their care and treatment of Plaintiff involving Plaintiff’s total vaginal hysterectomy and cystoscopy for menorrhagia and symptomatic uterus fibroids performed by Dr. Judita Bautista at Bellevue Hospital Center on May 25, 2011.

Plaintiff now moves under motion sequence 008 for an order striking NYCHHC's Answer for NYCHHC's alleged violation of the So-Ordered Stipulation of Discontinuance, dated October 2, 2013, as to Deborah B. Dyson, RPA ("RPA Dyson"), vacating said Stipulation of Discontinuance and issuing a default judgment against RPA Dyson, and for costs.

Plaintiff now moves under motion sequence 009 for an order striking NYCHHC's Answer and/or precluding it from testifying and presenting evidence at trial for its failure to comply with the Stipulation of Discontinuance, dated February 12, 2013, as to Defendants Caroline Drewes-Pessel, M.D. (Dr. Drewes-Pressel"), Marie Werner, M.D. ("Dr. Werner") and Allison Webb, M.D. ("Dr. Webb"), by refusing to produce them for a deposition, or in the alternative, compelling NYCHHC to produce these witnesses for depositions and costs.

Plaintiff argues in substance that Plaintiff entered into a So Ordered conditional Stipulation of Discontinuance, dated October 2, 2013, on the conditions that Plaintiff agreed to withdraw her default judgment against RPA Dyson and discontinue the action against RPA Dyson in exchange for NYCHHC's agreement to take responsibility for the acts and/or omissions of RPA Dyson and that RPA Dyson appear for a deposition. Plaintiff further argues that NYCHHC has refused to produce RPA Dyson for a deposition in violation of the agreement.

Plaintiff further argues that in the Stipulation, dated February 12, 2013, while the action was still pending in Kings County, Plaintiff agreed to discontinue the action against Drs. Drewes-Pessel, Warner and Webb on the condition that NYCHHC's agreement that it will be responsible for the acts and omissions of its employees, servants and agents occurring during the course of their employment, including those acts and omissions involving these three doctors. Plaintiff further argues in substance that NYCHHC refused to produce the doctors for depositions in willful violations of the discovery rules and Stipulation.

NYCHHC opposes both motions and argues in substance that Plaintiff failed to demonstrate good faith efforts to resolve the discovery dispute as required by the CPLR and that since the witnesses are no longer employed by NYCHHC, NYCHHC is only obligated to provide Plaintiff with their last known addresses on file. NYCHHC further argues that Plaintiff repeatedly ignored their timely, substantive responses to her request to depose the witnesses and that it has provided Plaintiff with their last known addresses numerous time. Therefore, NYCHHC argues that it has fulfilled its obligations. Additionally, NYCHHC argues that it has taken the additional steps of attempting to contact the witnesses by certified mail and telephone without success.

Additionally, NYCHHC argues in substance that Plaintiff failed to demonstrate that the depositions of the non-party witnesses are necessary. Also, it argues that it has not violated any court order or agreement.

Here, the court denies Plaintiff's motions. The court agrees with NYCHHC and finds that since the witnesses are no longer employed by NYCHHC, NYCHHC has fulfilled its obligations under the CPLR by providing Plaintiff with the witnesses' last known addresses on file. Additionally, NYCHHC adequately responded to Plaintiff's requests to take the witnesses' depositions and it went above and beyond its obligations by attempting to contact the witnesses by letter and telephone. NYCHHC is not obligated to take any further action to compel the witnesses to appear for depositions.


Additionally, the court finds that NYCHHC did not violate any of the terms of the Stipulations and that Plaintiff has not demonstrated her entitlement to any of the relief requested in either motion. The court is not persuaded by Plaintiff's arguments to the contrary.

The court has considered any additional arguments raised by the parties that were not specifically addressed herein and the court denies all additional requests for relief not specifically granted herein.

As such, it is hereby

ORDERED that the court denies Plaintiff Jane Ward’s motions filed under motion sequences 008 and 009, without costs to any party.

This constitutes the Decision and Order of the court.

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| <u>6/30/2023</u> DATE | | |  ERIKA M. EDWARDS, J.S.C. |
| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION |
| APPLICATION: | <input type="checkbox"/> GRANTED | | <input type="checkbox"/> GRANTED IN PART |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> SETTLE ORDER | | <input type="checkbox"/> OTHER |
| | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> FIDUCIARY APPOINTMENT |
| | | | <input type="checkbox"/> REFERENCE |